

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Embarq Communications, Inc.)	IC No. 07-S0276776
)	
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER ON RECONSIDERATION

Adopted: November 28, 2007

Released: November 29, 2007

By the Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we deny a Petition for Reconsideration filed by Embarq Communications, Inc.¹ (Embarq) asking us to reverse a finding that Embarq changed the Complainant's telecommunications service provider in violation of the Commission's rules by failing to obtain proper authorization and verification.² On reconsideration, we affirm that Embarq's actions violated the Commission's carrier change rules.³

I. BACKGROUND

2. In December 1998, the Commission adopted rules prohibiting the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁴ The rules were designed to take the profit out of slamming.⁵ The Commission applied the rules to all wireline carriers,⁶ and modified its existing requirements for the authorization and verification of preferred carrier changes.⁷

3. The rules require that a submitting carrier receive individual subscriber consent before a

¹ See Petition for Reconsideration of Embarq Communications, Inc. (filed October 3, 2007) (*Petition*) seeking reconsideration of *Embarq Communications, Inc.*, 22 FCC Rcd 15972 (2007) (*Division Order*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (CGB).

² See *Division Order*, 22 FCC Rcd 15972 (2007).

³ See 47 C.F.R. §§ 64.1100 – 64.1190.

⁴ See *id.*; see also 47 U.S.C. § 258(a).

⁵ See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1512, para. 4 (1998) (*Section 258 Order*). See also *id.* at 1518-19, para. 13.

⁶ See *id.* at 1560, para. 85. CMRS providers were exempted from the verification requirements. See *id.* at 1560-61, para. 85.

⁷ See *Section 258 Order*, 14 FCC Rcd at 1549, para. 66.

carrier change may occur.⁸ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁹

4. The Commission also adopted liability rules for carriers that engage in slamming.¹⁰ If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.¹¹ Where the subscriber has paid charges to the unauthorized carrier, the unauthorized carrier must pay 150% of those charges to the authorized carrier, and the authorized carrier must refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.¹²

5. The Commission received a complaint on May 10, 2007, alleging that Complainant's telecommunications service provider had been changed from AT&T Corporation to Embarq without Complainant's authorization.¹³ Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹⁴ we notified Embarq of the complaint.¹⁵ The Division found that Embarq failed to respond to the complaint. The Division stated that the failure of Embarq to respond or provide proof of verification is presumed to be clear and convincing evidence of a violation and, therefore, found that Embarq's actions resulted in an unauthorized change in Complainant's telecommunications service provider.¹⁶ Embarq seeks reconsideration of the *Division Order*.

II. DISCUSSION

6. Based on the record before us, we affirm the *Division Order* and deny Embarq's *Petition*. As discussed below, Embarq violated the Commission's carrier change rules by failing to respond in a timely manner. Moreover, Embarq acknowledges that it did, in fact, change Complainant's telecommunications service provider without authorization.

⁸ See 47 C.F.R. § 64.1120. See also 47 U.S.C. § 258(a) (barring carriers from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures).

⁹ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

¹⁰ See 47 C.F.R. §§ 64.1140, 64.1160-70.

¹¹ See 47 C.F.R. §§ 64.1140, 64.1160 (any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change).

¹² See 47 C.F.R. §§ 64.1140, 64.1170.

¹³ Informal Complaint No. IC-07-S0276776, filed October 3, 2007.

¹⁴ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹⁵ See Notice of Informal Complaint No. IC 07-S0276776 to Embarq from the Deputy Chief, Division, CGB, dated May 22, 2007 (Notice of Informal Complaint).

¹⁶ See *Division Order*, 22 FCC Rcd 15972 (2007); see also 47 C.F.R. § 64.1150(d).

7. First, Embarq failed to respond to the Notice of Informal Complaint¹⁷ in a timely manner. In its *Petition*, Embarq states it “did respond, albeit a little bit late, on or about August 10, 2007 ...”¹⁸ Embarq “regrets that its response was not provided in a timely manner, but the late filing does not change the fact that Embarq did not slam the Complainant.”¹⁹ Failure to respond to a slamming complaint within 30 days is presumed to be clear evidence of a violation of the Commission’s carrier change rules.²⁰ Embarq admits in its *Petition* that it failed to respond to the complaint within 30 days of being notified of the complaint.²¹

8. Even if Embarq had submitted its response in a timely manner, it is clear from the response that Embarq changed Complainant’s service without authorization and verification, in violation of the Commission’s carrier change rules.²² Embarq claims that, as explained in its August 10, 2007 response to the Division, the Complainant’s long distance provider was changed to Embarq as a result of a clerical error.²³ Specifically, Embarq states that Complainant’s telephone number was mistakenly entered into Embarq’s long distance system when a long distance account was created for a different customer.²⁴ Embarq asserts that, after learning of the mistake, it corrected the error and credited the Complainant.²⁵ Embarq contends it “did not actually slam the Complainant ... it simply made an unknowing clerical mistake.”²⁶ Embarq also argues that, “in this instance, verification with the Complainant pursuant to 47 C.F.R. § 64.1150(d) was not required because there was no intent by Embarq to change complainant’s long distance carrier.”²⁷ While Embarq asserts that it did not intend to slam the Complainant, and that it took remedial action after learning of its error, neither lack of intent nor remedial actions taken by Embarq before issuance of the *Division Order* alters Embarq’s statutory liability under

¹⁷ See *supra* n.15.

¹⁸ *Petition* at 1-2.

¹⁹ *Petition* at 2-3. Embarq attached to its *Petition* two exhibits (Exhibit A and Exhibit B). Exhibit A is a letter from Embarq to the Division’s Deputy Chief and is dated August 9, 2007. This letter states it is in response to the Notice of Informal complaint No. 07-S0276776. Embarq notes that it is reviewing its complaint response processes to better ensure that responses to such complaints are timely filed. *Id.* at 2 n.3. Exhibit B is Complainant’s telephone bill that the Division sent to Embarq when the Division notified Embarq of the complaint.

²⁰ See 47 C.F.R. § 64.1150(d). All slamming complaints are served by Certified Mail – Return Receipt Requested, and a U.S. Postal Service return-receipt card (Postal Card) accompanies each notification to document a carrier’s receipt of the complaint. The Postal Card indicates that Embarq received notification of the complaint May 29, 2007. Embarq’s response was due 30 days later, *i.e.*, by June 18, 2007. Embarq did not file a request for extension of the 30-day response deadline. Embarq’s response to the complaint was received August 20, 2007, and did not contain any explanation for the delay.

²¹ See *Petition* at 1-2.

²² See 47 C.F.R. § 64.1150(d).

²³ See *Petition* at 2.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* Embarq asserts that it therefore cannot provide verification by the Complainant because there is none to provide.

the Commission's carrier change rules.²⁸ Accordingly, we deny Embarq's request to reverse the *Division Order*.

III. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361, 1.106 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.106 and 1.719, the Petition for Reconsideration filed by Embarq Communications, Inc. on October 3, 2007, IS DENIED.

10. IT IS FURTHER ORDERED that this Order is effective UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel, Chief
Consumer & Governmental Affairs Bureau

²⁸See 47 C.F.R. § 64.1160, which sets forth absolution procedures where the subscriber has not paid charges and 47 C.F.R. § 64.1170, which sets forth reimbursement procedures where the subscriber has paid charges. See *Third Order on Reconsideration and Second Further Notice of Proposed Rule Making*, 18 FCC Rcd 5009, 5130, para. 81 (2003) ("the fact that a carrier has chosen to appease a customer does not alter its statutory liability . . . to the authorized carrier"). See also, e.g., *Acceris Communications Corporation*, 22 FCC Rcd 1551 (2007).